

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION

EXHIBIT

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UNITED STATES OF AMERICA, : Case No. 94-62-N  
 :  
Plaintiff, :  
 :  
vs. :  
 :  
CURTIS DRAYTON, :  
 :  
Defendant. : Montgomery, Alabama  
 : May 22, 1995  
 : 10:10 a.m.

SENTENCING  
BEFORE THE HONORABLE ANTHONY A. ALAIMO  
United States District Judge

APPEARANCES:

For the Government: CHARLES F. TESCHNER  
Assistant United States Attorney  
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For the Defendant: RONALD W. WISE, ESQUIRE  
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P R O C E E D I N G S

(Call to Order 10:10 a.m.)

THE COURT: United States against Curtis Drayton.

Mr. Wise.

MR. WISE: Yes. Good morning, Your Honor.

THE COURT: Good morning, Mr. Drayton.

THE DEFENDANT: Good morning.

THE COURT: Mr. Clerk, would you please administer  
the oath to Mr. Drayton?

THE CLERK: Would you please raise your right hand?

CURTIS DRAYTON, THE DEFENDANT, SWORN

THE DEFENDANT: I do.

THE CLERK: Please state your full name for the  
record.

THE DEFENDANT: Curtis Lee Drayton.

THE COURT: Mr. Drayton, if you will remember, on  
November the 16th of 1994, you were found guilty of Counts  
Two, Seven, Twelve, Thirteen, and Twenty-one of the  
Indictment charging you variously with violation of the drug  
laws of the United States.

At this point I will ask you if you have had an  
opportunity to read and discuss the Presentence Report with  
your attorney.

THE DEFENDANT: Yes, sir.

THE COURT: Do you have any objection to the

1 factual statements contained in the Presentence Report.

2 MR. WISE: Yes, sir. Your Honor, we have  
3 objections that were filed with the probation officer as has  
4 been stated by previous counsel.

5 THE COURT: Yes, I have them in my file.

6 MR. WISE: As well as, pursuant to this Court's  
7 order, a pleading that was filed May 15th reiterating those  
8 objections, factually and also to the guidelines, Your  
9 Honor.

10 Instead of sitting here reading them to the Judge,  
11 I adopt them at this time. And the Court has informed me  
12 that the Court has been over them.

13 THE COURT: Yes. With respect to the objections to  
14 the Presentence Report's statement of facts, those facts to  
15 which there are no objections, I will adopt them as findings  
16 by the Court.

17 To those facts to which there are objections and  
18 which have been noted by the record, the Court finds by a  
19 preponderance of the evidence that the statements contained  
20 in the addendum are correct. I am going to adopt them as  
21 findings of fact by the Court.

22 With respect to the objections to the probation  
23 officer's application of the guidelines, the Court adopts  
24 the position of the probation officer and determines that  
25 the --

1 MR. WISE: Your Honor, if I may interrupt you as to  
2 the guidelines?

3 THE COURT: Sure, certainly.

4 MR. WISE: As Mr. Rubino stated, and as Mr. Tobias,  
5 we also draw the Court's attention to U. S. v. Butler and to  
6 the nature of the formula that the Government has come up  
7 with as to the quantity of drugs.

8 We would also object, even assuming there was any  
9 reliability to that formula, which we don't concede, then it  
10 is not reasonably foreseeable by Mr. Drayton that others  
11 would be distributing these drugs. And Mr. Drayton should  
12 only be held accountable for the counts upon which the jury  
13 found him guilty, which is substantially less than one  
14 hundred and fifty kilograms.

15 Also that also goes to relevant conduct as to the  
16 foreseeability.

17 THE COURT: Yes.

18 MR. WISE: We also object to the Government and the  
19 probation officer finding that Mr. Drayton became a member  
20 in 1987. We submit there is not enough evidence to make  
21 that finding.

22 As to the two-point enhancement that Mr. Drayton  
23 received for a gun, the gun charge, he was charged along  
24 with the others in the conspiracy -- some of the others,  
25 Your Honor -- with possession of a firearm. He was found

1 not guilty of that.

2 The Probation Office has added two points to his  
3 score because he was a member of the conspiracy and because  
4 a co-defendant was found guilty of that charge.

5 I understand the law. The law also requires they  
6 have got to prove by a preponderance of the evidence that it  
7 was reasonably foreseeable by Mr. Drayton that a firearm  
8 would be used in connection with the activities in which he  
9 participated.

10 We submit there is not sufficient evidence of that,  
11 Your Honor, and ask that the two points not be added, as  
12 well as the other objections we have made.

13 THE COURT: With respect to that added objection to  
14 the facts and also to the guidelines reference, as to the  
15 appropriate guidelines, I do find by a preponderance of the  
16 evidence that the facts underlying that were established,  
17 and I will adopt that as the findings of fact by the Court.

18 I will, also, with respect to that, adopt the  
19 probation officer's position with respect to the appropriate  
20 guidelines.

21 And I find them to be an Offense Level of 44,  
22 Criminal History Category Roman Numeral One, which calls for  
23 life imprisonment.

24 With respect to supervised release, with respect to  
25 Counts Two, Seven, Eleven, Twelve and Thirteen, it calls for

1 a range in supervised release from three to five years.  
2 Count Twenty-one is not less than five years of supervised  
3 release.

4 The fine range is from twenty-five thousand dollars  
5 to \$10 million.

6 No restitution is involved here, but there is a  
7 special assessment of three hundred dollars.

8 Now do you know of any reason why I should not  
9 proceed with the imposition of sentence at this time?

10 MR. WISE: No, sir, Your Honor, other than the  
11 objections we had filed.

12 THE COURT: Yes, sir. Do you wish to make any  
13 statement, either one or both of you with respect to the  
14 sentence?

15 THE DEFENDANT: No.

16 MR. WISE: No, sir.

17 THE COURT: Accordingly, after, as I say, reviewing  
18 the Presentence Report, as well as it's addendum,  
19 considering the evidence in the case, pursuant to the  
20 Sentencing Reform Act, it is the judgment of the Court that  
21 the Defendant, Curtis Drayton, is hereby committed to the  
22 custody of the Bureau of Prisons for a term of life.

23 That sentence was selected because of the nature  
24 and seriousness of the offenses involved.

25 He does not have the ability to pay a fine, and, of

1 course, I will not impose one. He must pay the three  
2 hundred dollars special assessment which is due immediately.

3 On release from imprisonment he will be placed on  
4 supervised release for a term of five years during which he  
5 must comply with the standard conditions adopted by this  
6 Court. And he must not commit any other federal, state, or  
7 local crime, or possess any drugs, illegal controlled  
8 substances, and he must not own, possess, use, or handle  
9 firearms or other destructive devices.

10 Upon release, he is required to report to the  
11 Probation Office in the district in which he is released  
12 within seventy-two hours.

13 Now there are special conditions here of supervised  
14 release, and they involve submission by the Defendant to a  
15 drug test if ordered to do so by the probation officer, as  
16 well as the participation in a substance abuse program as  
17 may be directed by that office.

18 I am remanding him to the custody of the United  
19 States Marshal.

20 You are advised that if you are dissatisfied with  
21 this sentence, you have a right to appeal from it within ten  
22 days from today.

23 Do you understand that?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: If you do not appeal within that period

1 of time, it means that you will have given up your right to  
2 appeal.

3 THE DEFENDANT: Right, sir.

4 THE COURT: Of course, you will be entitled to the  
5 assistance of a lawyer during any such appeal.

6 THE DEFENDANT: Right.

7 THE COURT: If you cannot afford one and can  
8 demonstrate it, the Court will appoint one for you.

9 Do you understand that?

10 THE DEFENDANT: (Affirmative nod)

11 THE COURT: And if you desire, the Clerk there will  
12 help you file a notice of appeal.

13 THE DEFENDANT: Yes, sir.

14 MR. WISE: Your Honor may I have just a moment,  
15 please?

16 THE COURT: Certainly.

17 Having pronounced sentence, other than the  
18 objections which have previously been stated for the record,  
19 do you now have any other objection to the Court's findings  
20 of fact or conclusions of law or to the manner in which  
21 sentence was pronounced?

22 MR. WISE: None that have not already been brought  
23 to the Court's attention by pleadings and through the  
24 Probation Office.

25 And we would also renew our objection to the



1 offense level.

2 THE COURT: The record will so note.

3 That is the judgment of the Court.

4 (Recess at 10:16 a.m.)

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CERTIFICATION

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11 I certify that the foregoing is a true and correct  
12 transcript of the stenographic record of the above-mentioned  
13 matter.

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Norma Hatfield  
Norma Hatfield, Court Reporter

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Feb. 20, 1996  
Date